

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

\* \* \* \* \*

Country Inns & Suites by Carlson, Inc.,  
Plaintiff,

No. 13-cv-3381 (PJS/LIB)

v.

**REPORT AND RECOMMENDATION**

Praestans One, L.L.C.; Sanjay M. Amin;  
Nayanesh P. Amin; Ramesh Joshi; Prem P.  
Agarwal; Vijay Modi; and Naresh Amin,  
Defendants.

\* \* \* \* \*

This matter came before the undersigned United States Magistrate Judge upon the routine supervision of cases and upon an assignment made in accordance with 28 U.S.C. 636(b)(1)(A).

Country Inns & Suites by Carlson, Inc. (“Plaintiff”) commenced this action on December 9, 2013, by filing its Complaint, [Docket No. 1], which names as Defendants Praestans One, L.L.C., a Virginia limited liability company (“Defendant Praestans”); and Virginia residents Sanjay M. Amin (“Defendant S.Amin”); Nayanesh P. Amin (“Defendant Nayanesh P. Amin”); Ramesh Joshi (Def. Joshi”); Prem P. Agarwal (“Def. Agarwal”); Vijay Modi (“Def. Modi”); and Naresh Amin (“Def. Naresh Amin”) (collectively, “Defendants”). (Id. at ¶¶ 3-4). The docket appears to show that each of the Defendants was served with the summons and complaint between December 12, 2013, and December 18, 2013. (Summons Returned Executed [Docket Nos. 5-11]). In particular, the docket appears to show that Defendant Nayanesh P. Amin was served with the summons and complaint on December 12, 2013. (Summons Returned Executed [Docket No. 7]).

On January 17, 2014, more than 21 days having passed since Defendants were served, and there being no evidence in the record that Defendants had answered or otherwise made an appearance in the present case, the Court ordered Plaintiff to:

1. Within three (3) business days of this Order, Counsel for Country Inns & Suites by Carlson, Inc. ("Plaintiff") shall notify Defendants that they are required to file a responsive pleading or move for an extension of time to do so; and;
2. If the Defendants fail to file a responsive pleading or move for an extension of time to do so within five (5) business days of having been given the notice required by Paragraph 1, Plaintiff shall file an application of default; or advise the Court in writing of any good cause for not doing so; and
3. If the Plaintiff fails to comply with the foregoing within twenty (20) days of the date of this Order, the Court will recommend that the case be dismissed for lack of prosecution.

(Order [Docket No. 12], at 1-2). Additionally, the Court advised Plaintiff that if it failed to comply with this Order, the undersigned would "recommend that the case be dismissed for lack of prosecution." (Id. at 2).

Since that Order, three Defendants have filed responsive pleadings,<sup>1</sup> a fourth Defendant has obtained an extension of time to do so,<sup>2</sup> and Plaintiff has applied for and been granted an entry of default against certain other Defendants.<sup>3</sup> However, it has now been more than twenty (20) days, and Defendant Nayanesh P. Amin still has not filed an answer or responsive motion or otherwise made an appearance in this case; yet Plaintiff has neither filed an application for entry of default against Defendant Nayanesh P. Amin, nor has Plaintiff advised the Court of any good cause for such failure.

---

<sup>1</sup> See Def. Agarwal Mot. Dismiss [Docket No. 22]; Def. Joshi Mot. Dismiss [Docket No. 36]; and Def. Modi Mot. Dismiss [Docket No. 37].

<sup>2</sup> See Order [Docket No. 21] (pursuant to Stipulation [Docket No. 15], Def. S.Amin shall have until February 28, 2014, to answer or otherwise respond).

<sup>3</sup> See Application for Entry of Default, [Docket No. 18] (as to Defs. Praestans, Joshi, Modi, and Naresh Amin); Clerk's Entry of Default, [Docket No. 20] (entered against Defs. Praestans, Joshi, Modi, and Naresh Amin).

Consequently, the Court finds that, with regard to Defendant Nayanesh P. Amin, Plaintiff has failed to abide by the terms of the Court's Order of January 17, 2014. [Docket No. 12]. Because the Court forewarned Plaintiff of the potential consequences of its failure to abide by the Court's order, the Court recommends that, as to Defendant Nayanesh P. Amin, this action be dismissed for failure to comply with the Court's Order of January 17, 2014, [Docket No. 12], and for lack of prosecution.

Based on the foregoing and all of the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED:** That Defendant Nayanesh P. Amin be **DISMISSED without prejudice** from this action, for Plaintiff's failure to comply with the Court's Order of January 17, 2014, [Docket No. 12], and for lack of prosecution.

DATED: February 27, 2014

/s/ Leo I. Brisbois  
LEO I. BRISBOIS  
United States Magistrate Judge

### NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by March 13, 2014**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within **fourteen (14) days** of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.